

**Alberta WCB
Policies &
Information**

Chapter:

GENERAL POLICIES

Subject:

RECONSIDERATIONS, REVIEWS, AND APPEALS

Authorization:

BoD Resolution 2024/03/08

Date:

April 30, 2024

APPLICATION 2: RECONSIDERATIONS (NEW EVIDENCE)

1. *What is the process when information is submitted as new evidence to support a request for reconsideration?*

When an interested party submits information as new evidence to support a request to reconsider a previous decision, the process is as follows:

- a) Determine whether the information was obtained without unreasonable delay and submitted within the time limit (see Questions 3-9). If not, the process ends, and the reconsideration is not allowed.
- b) Determine whether the information submitted is new evidence (see Questions 10-12). If not, the process ends, and the reconsideration is not allowed.
- c) If the information is determined to be new evidence, reconsider the original decision that the new evidence relates to (see Questions 13-15 and Application 1).

2. *Does there need to be new evidence to reconsider a previous decision?*

WCB may reconsider a previous decision it has made, with or without new evidence (see Application 1) provided the decision has not already been the subject of a review by the DRDRB and/or an appeal at the AC.

WCB's internal Dispute Resolution and Decision Review Body (DRDRB) only reconsiders its previous decisions when there is new evidence, provided the decision has not already been the subject of an appeal at the AC.

The external Appeals Commission (AC) outlines rules and guidelines for reconsidering appeal decisions in its appeal rules and practice guidelines.

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3. *Are there parameters for obtaining and submitting new information?*

All interested parties are expected to make all reasonable efforts to **obtain** and **submit** all relevant information to the decision body as soon as the information becomes available. This means:

- An interested party must **obtain** information without unreasonable delay (see Questions 4 and 5).

AND

- An interested party must **submit** information within a specific time period (see Questions 6 and 7).

4. *What if there is a delay in obtaining information as new evidence?*

To be considered, new information needs to be obtained without **unreasonable delay**. This means the information must be obtained immediately or as soon as reasonably possible after a decision is made.

For example, if a worker disagrees with a decision, they must obtain information that could impact the decision (e.g., undergo new diagnostic testing, obtain a second opinion) as soon as reasonably possible after the decision is made.

Unless there are **exceptional and justifiable** reasons for a delay in obtaining the new information, it will not be admitted as evidence.

Examples of exceptional and justifiable reasons for a delay in obtaining new information might include, but are not limited to:

- There are new clinical findings (not available at the time of the original decision) that lead to a change in diagnosis
- The interested party relied on someone else that they trusted to seek and/or obtain new evidence on their

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Delay in obtaining new information (continued)

behalf, it was reasonable for them to rely on that person and, once they became aware that the person had failed to obtain new evidence, they took reasonable and timely action

- The interested party was unable to seek and/or obtain new evidence due to a diagnosed mental or physical incapacity or they were prevented from doing so because of some other valid reason

5. *What is considered when determining whether information was obtained without unreasonable delay?*

If new evidence was reasonably available (or could reasonably have been made available) immediately or as soon as possible after a decision was made, the body deciding the issue considers why the information was not obtained at that time.

If there are no exceptional and justifiable reasons why the information was not obtained at that time, the body deciding the issue may decide not to apply the test of new evidence (Questions 10-12) and the reconsideration may not be allowed (e.g., if a worker or employer waits multiple years before gathering new information that could reasonably have been obtained at the time of the initial decision or immediately afterward, the information in question may not be considered as new evidence and the reconsideration may not be allowed).

For example, a worker disagrees with a decision made 10 years ago and obtains a new functional capacity evaluation from a new physician.

Unless there are exceptional and justifiable reasons for why the functional capacity evaluation was not obtained within a reasonable timeframe after the original decision was made, this is an unreasonable delay in obtaining the information and the reconsideration is not allowed

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6. *What are the time limits for submitting new information to support a request for reconsideration?*

For WCB and DRDRB, the time limit for submitting new information to support a request for reconsideration is **one year from the date that the new information is discovered or becomes available**. Submitting information means providing the decision body with the new information (e.g., copies of medical reporting, copies or witness statements) and/or informing the decision body of the existence of the new information so it can be gathered.

The AC outlines its time limit for submitting information as new evidence in its appeal rules and practice guidelines.

7. *Can the time limit for submitting new information to WCB or the DRDRB be extended?*

No, the time limit cannot be extended. An interested party has one year from the date that the new information is discovered or becomes available to submit the information to WCB or the DRDRB.

8. *Who determines whether information was obtained without unreasonable delay and submitted within the time limit?*

The determination of whether information was obtained without unreasonable delay (Question 4) and submitted within the time limit (Question 6) is made by the body that last made a decision on the issue submitted for reconsideration.

When the decision in question was made by:

- WCB (and has not been reviewed by DRDRB or the AC), then WCB determines whether the information was obtained without unreasonable delay and submitted within the time limit
- the DRDRB, then DRDRB determines whether the information was obtained without unreasonable delay and submitted within the time limit

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Who determines unreasonable delay and time limit (continued)

- the AC, the AC determines whether the information was obtained without unreasonable delay and submitted within the time limit

If it is determined that the information was obtained without unreasonable delay and submitted within the time limit, the information is reviewed to determine if it is new evidence (see Questions 10-12).

9. Can the decision about time limit and unreasonable delay be reviewed or appealed?

Yes, a decision not to admit evidence because there was an unreasonable delay in obtaining the information or the information was not submitted within one year from the date the information was discovered or became available can be reviewed or appealed, subject to the same right of review or appeal as any other claim or employer account decision (see Application 3).

10. What is new evidence?

New evidence is new information that may affect a previous workers' compensation decision. To be considered new evidence, it must meet all of the following criteria:

- the evidence is **material** – it is relevant to the issue in question; and
- the evidence is **new** – information is new if it was not available to the decision-maker or if it provides information that is not already on file; and
- the evidence was **not reasonably available at the time the decision was made** – it could not have been presented by the worker or employer at that time; and
- the evidence is **substantive** – it gives new information that could establish a fact that could impact the decision; and

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New evidence (continued)

- the evidence is **probative** – it is reasonably capable of proving (or disproving) a relevant fact at issue in the initial decision (i.e., alters the balance of probabilities if it proves/disproves a relevant piece of information); and
- the evidence is **factual and objective**

Information is *not* new evidence if:

- it consists of an opinion on evidence that was available to the original decision-maker; or
- it reiterates, reviews, or is an argument about information that is already on file; or
- it pertains to a different time period than the issue under reconsideration; or
- it simply summarizes or reformats information that was considered by the decision-maker when the decision was made

For example, a medical report is not new evidence if it:

- consists of the same clinical findings, by the same or another physician of the same specialty, already taken into account by the decision-maker, or
- provides a new opinion but is not based on new scientific evidence (e.g., new tests or examinations) as this would not provide any new information that was not available to the original decision-maker, or
- assesses a worker’s current state as opposed to their state at the time of the issue under reconsideration (e.g., a functional capacity evaluation completed today is not new evidence regarding a worker’s functional abilities from several years ago). As the information pertains to a different time period than the issue under

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New evidence (continued)

reconsideration, it is not relevant to the original decision and is not new evidence

New evidence may include, but is not limited to:

- health information
- work-relatedness
- fitness to work earnings information
- information about employer operations
- administrative review findings that identify previous errors or omissions
- appeal findings
- various other relevant facts

11. *Who decides whether information is new evidence?*

The same body that made the decision about whether the information was submitted within the required time limit and without unreasonable delay (see Questions 3-8) determines whether the submitted information is new evidence.

When the decision in question was made by:

- WCB (and has not been reviewed by the DRDRB or the AC), then WCB determines whether the information submitted is new evidence
- the DRDRB, then DRDRB determines whether the information submitted is new evidence
- the AC, the AC determines whether the information submitted is new evidence

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*Who decides new evidence
(continued)*

To qualify as new evidence, the information submitted with the request for reconsideration must meet the definition of new evidence under Question 10.

If the evidence is determined *not* to be new evidence, the reconsideration is not allowed.

12. *Can the decision about new evidence be reviewed or appealed?*

Yes, a decision about whether submitted information is new evidence can be reviewed or appealed, subject to the same right of review or appeal as any other claim or employer account decision (see Application 3).

13. *If it is determined there is new evidence, what issues can be reconsidered?*

If there is new evidence, the decision body only reconsiders the issue(s) that are:

- submitted for reconsideration to the decision body (i.e. the original decision), and
- related to the new evidence

14. *If it is determined there is new evidence, who reconsiders the original decision based on the new evidence?*

If it is determined that the information submitted is new evidence, the **original decision** is reconsidered by the body that last reviewed that original decision. The original decision is the issue submitted for reconsideration.

If the DRDRB is the last decision maker, it can choose to send the issue to WCB for review based on the new evidence.

If the AC is the last decision maker, it can choose to send the issue to WCB for review based on the new evidence.

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15. *Once the original decision is reconsidered, can that reconsideration decision be reviewed or appealed?*

If after reconsidering the new evidence, the decision body **overturns the original decision:**

- that decision is subject to the same right of review or appeal as any other claim or employer account decision, and
- the timeframe for review or appeal starts from the date the original decision is overturned

If after reconsidering the new evidence, the decision body determines the new evidence **does not alter the original decision:**

- the **original** decision is subject to the same right of review or appeal as any other claim or employer account decision
 - the timeframe for review or appeal starts from the date of the original decision, not the date the decision body determined the new evidence does not alter the original decision
- the **reconsideration** decision (i.e., the decision that the new evidence does not alter the original decision) is subject to the same right of review or appeal as any other claim or employer account decision
 - the timeframe for review or appeal starts from the date of the reconsideration decision, and
 - DRDRB or AC may only consider whether the reconsideration decision is **correct**

For timeframes for review and appeal, see Application 3.

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16. *If a decision is changed based on new evidence, when are decisions effective?* See Application 4 for implementing a changed decision.
17. *When is this policy application effective?* This policy application [Application 2 – Reconsiderations (New evidence)] is effective July 1, 2024, and applies to all decisions relating to new evidence on or after that date, except when noted otherwise in a specific policy section(s).

Previous versions

Effective July 1, 2024, Policy 01-08 was renamed and restructured. See [Document History](#).

Previous versions for October 2002 – July 2024:

Policy 01-08, Part II, Application 1: Interaction with the review and appeal processes

- [Policy 0108 Part II - Application 1 - April 2021](#)
- [Policy 0108 Part II - Application 1 - September 2018](#)
- [Policy 0108 Part II - Application 1 - April 2018](#)
- [Policy 0108 Part II - Application 1 - August 2015](#)
- [Policy 0108 Part II - Application 1 - January 2006](#)
- [Policy 0108 Part II - Application 1 - January 2004](#)
- [Policy 0108 Part II - Application 1 - January 2003](#)
- [Policy 0108 Part II \(1st Issue\) - Application 1 - October 2002](#)

Policy 01-08, Part II, Application 2: Claims

- [Policy 0108 Part II - Application 2 - April 2018](#)
- [Policy 0108 Part II - Application 2 - August 2015](#)
- [Policy 0108 Part II - Application 2 - June 2010](#)
- [Policy 0108 Part II - Application 2 - January 2004](#)
- [Policy 0108 Part II \(1st Issue\) - Application 2 - October 2002](#)